



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

November 9, 2020

Via Email to rlwrights@comcast.net

Oskar Scheikl, Ph.D.
Superintendent
Rockingham County Public Schools
100 Mount Clinton Park
Harrisonburg, Virginia 22802

RE: OCR Complaint No. 11-20-1355
Resolution Letter

Dear Dr. Scheikl:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on August 28, 2020, against Rockingham County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleged that the Division discriminated against the Student on the basis of disability. Specifically, the complaint alleges that from March 12, 2020 until the present, the Division denied the Student a free appropriate public education (FAPE) when it failed to implement the provisions of the Student's Section 504 Plan that provided that:

1. The Student will be given XXXXX
2. The Student will visit the language arts reading teacher to work XXXXX
3. The Student was allowed to XXXXX so that he could identify and correct any grammatical or other errors; and
4. The Student will have access to XXXXX that need to be completed.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR determined that this case was appropriate for the Rapid Resolution Process, as outlined in OCR's *Case Processing Manual (CPM)* at Section 110. Accordingly, OCR reached out to the Division about promptly resolving this complaint, and the Division agreed to work with OCR to resolve the allegations expeditiously. OCR is closing the allegations pursuant to *CPM* Section 302, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

The following is a summary of the evidence obtained by OCR during the investigation to date.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements.

Facts

The Student was enrolled in seventh grade at the School during the 2019-2020 school year. The Division found the Student eligible for services under Section 504 at a meeting held on XXXXX. The Section 504 Team developed a Section 504 Plan and met to approve it on XXXXX. As a result of concerns the Complainant expressed about the Plan, the meeting was reconvened on XXXXX, and the Section 504 Team, including the Complainant, approved the Plan after the Complainant's concerns had been addressed.

On March 12, 2020, in accordance with a state order, the Division closed in response to the Covid-19 pandemic. During the initial weeks of closure, the Division did not provide any educational services to students; the closure was treated as an emergency closure much like a weather-related closure. The Division reported that it initiated distance learning for all students beginning on April 13, 2020. According to the Complainant, from that date until the end of the school year, the Division did not provide the Student with XXXXX as required by the Student's Section 504 Plan. The Division does not dispute this.

The Division confirmed that the Student's Section 504 Team has not convened since XXXXX, when it approved the Student's Section 504 Plan, before the Division began providing on-line instruction.

Analysis

Based on the information provided above, OCR identified a concern that during the period from April 13, 2020 through the date of this letter, the Division did not implement the provisions of the Student's Section 504 Plan identified by the Complainant or convene a group of people

knowledgeable about the Student to consider whether the Student's Section 504 Plan should be revised since the Division instituted on-line learning for the students in the Division.

On November 6, 2020, the Division signed the enclosed Resolution Agreement which, when fully implemented, will address the allegations investigated. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to meet to discuss the provision of compensatory and/or remedial services to the Student, and if appropriate, develop a plan to provide such services. In addition, at the same meeting, the Division would discuss whether revisions to the Student's Section 504 Plan are necessary for the period during which the Student receives remote instruction. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact XXXXX, the OCR attorney assigned to this complaint, at XXXXX.

Sincerely,

Jennifer Barmon
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Scott Hand, Director Pupil Personnel Services